

National
Religious
Broadcasters

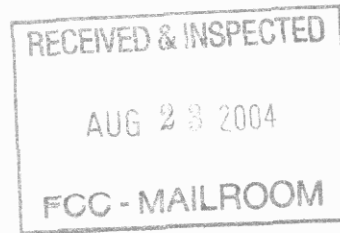
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Christian
Communicators
Impacting
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August 10, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: MB Docket No. 04-207

Dear Ms. Dortch:

Enclosed please find the reply comments of the National Religious Broadcasters in the above referenced matter.

Sincerely,

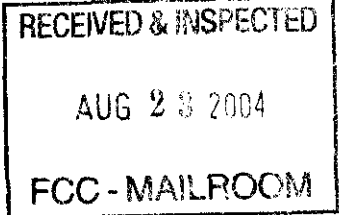
A handwritten signature in cursive script that reads "Anne Dunlap".

Anne Dunlap
Assistant to the President

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**



In the Matter of

***A La Carte* or Themed-Tier Programming
And Pricing Options for Programming
Distribution on Cable Television and
Direct Broadcast Satellite Systems**

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MB Docket NO. 04-207

REPLY COMMENTS OF THE NATIONAL RELIGIOUS BROADCASTERS

The National Religious Broadcasters ("NRB")¹ submits these reply comments in response to the Commission's Public Notice, DA 04-1454, released May 25, 2004, and in response to various comments received by the Commission on this subject to date.

As an association, NRB has very strong reservations about the potential impact of A La Carte channel choice on our member program producers and broadcasters. In its current configuration, NRB opposes the A La Carte proposal because of its direct threat to the Must-Carry provisions of federal law and the likelihood that it would cause irreparable damage to religious, independent, ethnic and niche program producers. We are further concerned about the impact of A La Carte on those of our members who actually purchase carriage rights on cable and satellite systems. This unique niche of programmers², who

¹ Chartered in 1944, NRB is an association of Christian communicators involved in television, radio, and Internet broadcasting. With more than 1600 member organizations, NRB members reach millions of viewers, listeners and readers each week. Current survey data demonstrates that 141 million Americans listen to religious broadcasting at least once a month. NRB members are committed to proclaiming the good news of eternal life through faith in Jesus Christ, to transforming culture through the sound application of biblical truth, and to preserving religious liberty by keeping the doors of electronic media open for the spread of the Gospel.

believe so strongly in the value of their message that they are willing to pay for carriage rights, would be devastated under a strict A La Carte regime.

A. The Injurious Effects of A La Carte on NRB Members

The salutary benefits resulting from Must-Carry requirements are well-established: 1) free over-the-air broadcast television is preserved; 2) the multiplicity of viewpoints available through electronic media is strengthened; 3) the favorable effects of localism are encouraged; and 4) fair competition in the market for television programming is fortified. A stringent A La Carte system would partially or completely undo many of these benefits and have serious adverse affects on NRB members.

For example, in the absence of Must-Carry requirements, NRB program producers and broadcasters would be reduced to economic inviability through loss of potential viewing audience. With that loss a critically important cultural viewpoint, that of religious expression, would then be dramatically reduced and perhaps even silenced in the long run. Further, as almost all religious programming is locally produced and strongly connected to local churches, an important voice in the panoply of local viewpoints would also be significantly diminished.

A similarly adverse effect would be visited upon programmers who currently purchase carriage from cable and satellite operators through leased-channel arrangements. In the absence of a mandatory basic tier of programs, the economic viability of those arrangements disappears. Without a potential viewing audience, new and innovative

² These programmers are anomalous in the current economic model of subscriber services, in that rather than receiving payment from a cable or DBS system for their program offering (as the vast majority of cable and satellite channels do) they pay the system operator for carriage rights.

programming as well as programming developed for niche audiences can never reach the financial threshold necessary for survivability.

The end result is that the very kinds of programs that both the Congress and the Commission hope to encourage are not developed, creative innovation is stifled, and important voices are lost in our cultural dialogue.

B. Some NRB Support For A La Carte

While NRB, as an association, is opposed to A La Carte as currently formulated, it is worth noting that a significant segment of our membership supports the concept of A La Carte channel choice because of the prevalence of indecent or offensive content in cable and satellite system programs. In the not-too-distant past, parents could trust broadcasters, cable operators and DBS operators to exercise reasonable judgment about program content when there were children likely in the viewing audience. For better or for worse, the television set has sometimes been seen as a helpful babysitter for weary parents who need to get other things done. That day has long since passed. Parents can no longer unreservedly trust broadcasters or cable and satellite operators to use discernment and discretion out of concern for the welfare of children³. The vacuous argument that subscribers can just change the channel when they come across indecent programming is completely without merit, especially when the interests of children are rightly considered⁴. Furthermore, many of our members object in principle to being required to pay for

³ We commend the Commission for its efforts in indecency enforcement among broadcasters. With the influence of cable and satellite programming also becoming uniquely pervasive, we believe the time has passed when cable and satellite operators should be treated differentially in matters of indecency.

⁴ A small child suddenly confronted with Janet Jackson's infamous "wardrobe malfunction" does not walk away untouched by a mere change of the channel after the fact.

programming they consider objectionable⁵. For these reasons, a significant group of NRB members view A La Carte as a potentially effective tool for dealing with indecent and offensive content. In the absence of the concerns expressed above in Section A, NRB would likely support A La Carte as a mechanism for dealing with the growing problem of indecent programming.

C. Conditions Under Which NRB Could Support A La Carte

In principle, A La Carte channel choice has much to commend it. It would allow the free flow of the market to determine which programs develop a significant viewing audience. A La Carte would also remove a requirement that runs completely counter to free market principles: the unjust burden of requiring subscribers to pay for content that they find objectionable, offensive, or indecent.

However, given the concerns expressed above in Section A, two important conditions would have to be met in order for NRB to support a modified A La Carte channel choice regime. First, a modified A La Carte must *explicitly* preserve the Must-Carry provisions of federal law, making all qualified broadcast stations part of a mandatory basic tier of program offerings. Second, the mandatory basic tier must also *explicitly* include all leased-channel arrangements whereby programmers pay for carriage on a cable or satellite system. An important proviso would be required to avoid abuse of such leased-channel arrangements: that in exchange for this mandatory carriage on a basic tier these program offerings are required to conform to all federal indecency statutes and regulations.

⁵ When proponents of indecent programming point to the availability of blocking technology, they completely miss the point. Subscribers are still required to pay for indecent programming whether they allow it to reach their viewing screen or not.

If these important conditions were met, then an A La Carte framework that applied only to the national program feeds could be implemented. The resulting system would provide: 1) maximum channel choice for consumers; 2) protection for the important public policy objectives impounded within Must-Carry; and 3) a leased-channel mechanism whereby new programs and programs developed for niche audiences could be protected. NRB would likely support such a modified A La Carte framework.

Conclusion

NRB strongly opposes the A La Carte channel choice proposal for cable and satellite systems (as initially formulated) because of the direct threat to the Must-Carry requirements of federal law and because of the adverse economic impact on programmers who lease channels from cable and satellite operators. However, NRB could support a Modified A La Carte framework under the following conditions: 1) the Must-Carry provisions of federal law are *explicitly* preserved and all qualified broadcasters are carried on a mandatory basic tier; and 2) programmers who pay for carriage through leased-channel arrangements are also carried on a basic mandatory tier, provided their programming conforms to federal indecency statutes and regulations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Frank Wright", with a stylized, flowing script.

Frank Wright, Ph.D.
President
National Religious Broadcasters

August 5, 2004